555, that an invention patented here is not to be defeated by a prior foreign patent, provided nothing has been done which enables one in this country to practice the invention without making experiments. The granting of a patent here is independent of what may have been done abroad, if the article is not in general use by the American public.

RAILROADS—WATCHMAN AT CROSSING—ACCIDENT TO DEAF PERSON—PISKOROWSKI v. DETROIT, G. H. & M. R. R. Co., 80 M. W. 241 (Mich.)—A deaf man walking along a railroad track attempted to cross the same at a street crossing where a flagman was stationed to give warning of the approach of trains. Before starting across he had been hailed by workmen on an approaching hand-car, but failed to hear their call and was injured by the car in consequence. He had no warning from the flagman of the hand-car's approach. *Held*, that no negligence could be imputed to the company because of the flagman's neglect to warn, when he did not know that the injured man was deaf.

This seems to be a strange and not altogether correct decision in view of the general rule that a person injured while crossing a railroad track at a street crossing has a right to rely, as the plaintiff did, on the flagman to give him notice of the approach of trains. Cf. *Richmond* v. *R. R. Co.*, 87 Mich. 374, where plaintiff recovered damages because the necessity of a warning was apparent to the flagman, but he neglected the duty of giving notice of an approaching train.

The fact that the operators of the hand-car gave warning ought not to excuse the flagman from doing the same, for it would seem to be as much his duty to give notice of the approach of a hand-car as to warn persons of an oncoming locomotive or train, and this duty should exist irrespective of whether the men on the hand-car gave notice or not. The placing of flagmen at street crossings in populous districts is an additional safeguard required, besides the warning signals from trains themselves.

RESTRAINT OF TRADE—EXTENT TO WHICH ALLOWED—SADDLERY HARDWARE Co. v. HILLSBORO MILLS, 44 Atl. 300 (N. H.).—Defendant agreed in writing to sell and ship to plaintiff 622 blankets of different styles, at prices specified and "not to sell blankets to anyone else in New York City." There was no limitation as to time. *Held*, the contract being in restraint of trade, is not to be extended by construction beyond the fair and natural import of the language used, and that agreement will continue only for such length of time as will afford the buyer a reasonable opportunity for disposing of the goods in the usual course of trade with the exercise of due diligence.

This principle of construction shows the disfavor in which the law still holds contracts in restraint of trade. As was said in a New York case, *Greenfield* v. *Gilman*, (140 N. Y. 168), "while the law, to a certain extent, tolerates contracts in restraint of trade or business, and will uphold them, they are not to be treated with special indulgence." The same principle was applied in determining the territorial limits in which contracts operated as a restraint in *Smith* v. *Martin*, 80 Ind. 260, and in *Roller* v. *Ott* 14 Kan. 609, it was said provisions of such a contract should not be extended by construction or implication beyond what their terms clearly require. *Harkinson's Appeal*, 78 Pa St. 196, is to the same effect.

SHIPPING—TEST OF MASTER—LIABILITY OF OWNERS—GUTTNER ET AL. v. PACIFIC WHALING Co., 96 Fed. 616.—The masters of two whaling ships, together with natives living on shore, took from an ice-bound vessel, without consent of those in charge, certain provisions. *Held*, that the principle of joint tort feaser does not apply, and that the owners of one of the vessels could only be held liable for the value of such stores taken as were used by his ship, and which it would have been within the scope of the master's employment to secure.

In this case we find the principle of joint tort feasers modified by the rules that govern the relation of principal and servant. If the master of the offending vessel had been sued he could have been held as a joint tort feaser for the entire damage resulting from the acts of all. But if the plaintiff elects to sue the company, it seems that he must forego the advantage that an action against the master would give him. For by the law of torts he can only hold the company liable to the extent of such acts of the master as were in the scope of his authority. *Armory* v. *Delamirie*, 1 Strang. 505.

TAXATION—UNIFORMITY—IN RE PAGE, 58 Pac. Rep. 478 (Kansas).—At the last session of the Kansas Legislature an act was passed providing for the taxation of contracts of insurance made with insurance companies not authorized to do business in the State. *Held*, to be unconstitutional for lack of uniformity.

This enactment is illustrative of the hostility of petty officials toward wealthy corporations who are non-residents. In Kansas it is required that all property shall be taxed at its true value in money. The point was well made by the court that the tax was not uniform, as no account is taken of the solvency of the company, or that the values of other property may fluctuate, or the rate of taxation thereon may change from year to year, while the rate of taxation levied on the property in question remains unchanged. The ununiformity of imposing a tax on a man who insures in a company unauthorized to do business in the State, and the exempting of his neighbor who insures in a licensed company, is obviously unconstitutional. *County of Santa Clara* v. *Southern Pac. Ry. Co.*, 18 Fed. 385.

TRADE-NAMES—INJUNCTION—USE OF OWN NAME—ARNHEIM V. ARNHEIM, 59 N. Y. Sup. 948—"Arnheim the Tailor" dropped the word "Tailor" and adopted the name "Marks Arnheim." Two years later the defendant, whose father-in-law had once used the name "Arnheim the Tailor" in New York, but had abandoned it twelve years before and moved to Chicago, opened a store in New York, using the name "Arnheim the Tailor." She issued receipts, guarantees, and catalogues similar to the plaintiff's and used similar boxes, ordering them from the same people. She exhibited a photograph of the plaintiff as that of the proprietor of her store and arranged her store practically in the same manner as the plaintiff's. *Held*, the plaintiff was entitled to an injunction restraining the defendant from the use of the word "Arnheim" as a trade-mark.

The case shows how absolute has become the authority of the doctrine of "Fair Trade." The defendant was entitled to use her own name as a trade-mark in a business conducted on its own merits and not feeding upon the reputation earned by the sagacity of another. *Chas. S. Higgins Co.* v. *Higgins Soap Co.*, 144 N. Y. 462; *Devlin* v. *Devlin*, 69 N. Y. 212; *Gilman* v. *Hunnewell*, 122 Mass. 139; *Saxlehner* v. *Apollinaris Company*, 1897 L. R. 1 Ch. 893; *Hires Co.* v. *Hires*, 182 Pa. St. 346.

TRUSTS—LIABILITY OF FUND FOR DEBTS OF BENEFICIARY—FIRST NATIONAL BANK OF PLAINFIELD V. MORTIMER, 60 N. Y. Sup. 47.—A mother devised property in trust, the income therefrom to be applied to the use of her son during his lifetime, and giving said son power to dispose of the property by will. *Held*, that neither the principal or income of such fund could be subjected to the payment of the beneficiary's debts, even for necessaries, and also, that as it is impossible to determine how much of such income is a surplus over and above the proper necessities of the beneficiary, such surplus cannot be reached.

Although this decision is based upon statute law and is in harmony with the prior New York decisions (*Graff* v. *Bennett*, 31 N. Y. 12; *Williams* v. *Thorn et. al.*, 70 N. Y. 270), yet it is of interest inasmuch as it is in opposition to the more generally accepted view. It also points out the extreme liberality extended to such trusts, and the tendency of New York to enlarge the doctrine as existing in other States.